



PROJECT MUSE®

Guns and Human Rights: Major Powers, Global Arms Transfers,
and Human Rights Violations

Lerna K. Yanik

Human Rights Quarterly, Volume 28, Number 2, May 2006, pp. 357-388 (Article)

Published by Johns Hopkins University Press

DOI: <https://doi.org/10.1353/hrq.2006.0026>



➔ *For additional information about this article*

<https://muse.jhu.edu/article/196906>

Guns and Human Rights: Major Powers, Global Arms Transfers, and Human Rights Violations

*Lerna K. Yanik**

ABSTRACT

In the recent past, there have been countless instances of arms transfers to countries with problematic human rights records, many of which have been cited in the reports of various advocacy groups. However, so far, the amount of research classifying these flows has been limited. This study examines the trends between 1999 and 2003 in arms transfer to countries with poor human rights records, as well as the reasons for continuation of these transfers. It puts forward two major arguments for these transfers to such countries. First, the national and international codes ostensibly “prohibiting” transfers to these countries are crafted in a way that eventually plays into the hands of the countries and manufacturers that want to transfer. Second, the end of the Cold War has turned the arms transfer market into a buyer’s market more than ever. The declining domestic military spending experienced in most of the seller countries has forced arms manufacturers to pursue markets beyond their borders, sometimes even illegally and illicitly.

I. INTRODUCTION

As the first Gulf War started in January 1991, the Coalition forces that were determined to remove the Iraqi occupation forces in Kuwait quickly discovered that some of their weapons were not quite usable. While the

* *Lerna K. Yanik* is Assistant Professor, Department of Political Science, teaching international politics at Bilkent University in Ankara, Turkey.

A previous version of this article was presented at the Annual Meeting of the International Studies Association (ISA) 17–21 March 2004, Montreal, PQ, Canada. The author would like to thank the Stockholm International Peace Research Institute (SIPRI) for their kind permission to use the data on arms transfers. The usual disclaimers apply.

French were unable to use their Mirage fighter jets because the Coalition forces could not distinguish the French Mirages from “enemy” Iraqi Mirages sold to Iraq by France, it also soon became clear that the radar jamming systems purchased by Iraq from the British created a great danger for the Coalition forces.¹ The French and the British were not alone in arming Iraq, a country that was at war with Iran and that brutally repressed its minorities. The Soviet Union, the United States, Germany, and many other countries throughout the 1970s and the 1980s had literally raced with each other to sell arms, both conventional and unconventional, to Iraq.² Similarly, before the Rwandan genocide in 1994, various countries, including South Africa, Israel, Albania, France, and Bulgaria, had no problems showering arms on a country where ethnic tensions were on the brink of explosion.³

These two examples are the best-known cases of arms sales by mostly Western powers to countries undergoing violations of human rights in conflict. Yet, they are not part of a distant history. While the international community has embargoed the delivery of arms to several countries in conflict,⁴ the practice of delivering arms to conflict zones or to countries with imperfect human rights still continues, and there are many examples. For example, in the early 1990s, Italian arms and ammunition made their way to Sierra Leone and Congo, two countries embroiled in ethnic conflict.⁵ Similarly, *The Guardian*, in a July 2002 article, noted sharp increases in British arms exports to Israel, Pakistan, Turkey, Saudi Arabia, Indonesia, Jordan, and India.⁶ On the other hand, when the approval of arms sales to Nepal, a country in conflict and with a poor human rights record, surfaced in Belgium in July 2002, it led to the resignation of the Finance Minister Magda Alvoet.⁷ More

1. NEIL COOPER, *THE BUSINESS OF DEATH: BRITAIN'S ARMS TRADE AT HOME AND ABROAD* 147 (1997).
2. Stockholm International Peace Research Institute (SIPRI), *Imported Weapons to Iraq, 1970–2004*, available at http://www.sipri.org/contents/armstrad/atiqr_data.html/view?searchterm=. See also Neil Mackay, *Revealed: 17 British Firms Armed Saddam with His Weapons*, *SUNDAY HERALD*, 25 Feb. 2003, available at http://www.zmag.org/content/print_article.cfm?itemID=3124§ionID=10; BBC News, *On This Day: 15 February, 1996: Arms-to-Iraq Report Published*, available at http://news.bbc.co.uk/onthisday/hi/dates/stories/february/15/newsid_2544000/2544355.stm; Fred Barbash, *Report Reveals British Deceit, Denial, And Cover-up in '80s Arms Sales to Iraq*, *WASH. POST*, 16 Feb. 1996, at A3; Michael Dobbs, *US Had Key Role in Iraq Buildup*, *WASH. POST*, 30 Dec. 2002, at A1.
3. George Bloch, *France Discloses Arms Sales: Exports Grow Despite Curbs Imposed by EU*, *WASH. TIMES*, 9 Apr. 2000, at C-10; Lisa Misol, *Weapons and War Crimes: The Complicity of Arms Suppliers*, in *HUMAN RIGHTS WATCH, WORLD REPORT 2004* (2004), available at <http://hrw.org/wr2k4/13.htm>.
4. SIPRI, *International Arms Embargoes, 1998–2004*, available at <http://www.sipri.org/contents/armstrad/embargoes.html>.
5. Brian Wood, *Stopping the Global Terror Trade*, Speech at the European Social Forum (2002), available at http://web.amnesty.org/pages/ec_briefings_fora_msp.
6. Richard Norton-Taylor, *Britain Doubles Arms Sold to Israel: Annual Report of Weapons Exports Lists Destinations from Channel Islands to Pakistan*, *GUARDIAN*, 20 July 2002, available at <http://www.guardian.co.uk/armstrade/story/0,10674,758666,00.html>.
7. Bernard Adam, *Belgium Makes the European Code of Conduct Legally Binding*, *IANSA NEWS*, Dec. 2002, available at <http://www.iansa.org/newsletter/dec2002>.

importantly, the United States, a country that is considered to have the most sophisticated laws on arms transfers, decided to lift the sanctions imposed on India and Pakistan after 11 September 2001 and resumed the transfer of arms to both of these countries as new allies of the United States in the "War Against Terrorism."⁸

The examples of arms transfers to countries with problematic human rights records are countless. There are many more contextual examples cited in the reports of various advocacy groups,⁹ but so far, there has been limited research classifying these flows. This article examines the trends between 1999 and 2003 in arms transfer to countries with poor human rights records and the reasons for the continuation of these transfers in spite of the presence of various international and national laws ostensibly "prohibiting" transfers to these countries. Some statistical studies have argued that after the end of the Cold War, the United States started to pay attention to human rights conditions in recipient countries; and thus, "countries that abuse human rights were less likely to be recipients of American arms."¹⁰ While these statistical studies tend to classify arms transfers as "less likely," when we look at the practice, most supplier countries, including the United States, eventually uphold their commercial and national security concerns and turn their backs on human rights concerns that they have long championed.

The relation between arms transfers and the exacerbation of conflicts and human rights violations has long been an established fact.¹¹ This nasty

8. *Bush Lifts Sanctions on India, Pakistan*, ASSOC. PRESS, 23 Sept. 2001.

9. See, e.g., Wood, *supra* note 5; AMNESTY INTERNATIONAL, A CATALOGUE OF FAILURES: G8 ARMS EXPORTS AND HUMAN RIGHTS VIOLATIONS (2003), AI Index IOR 30/003/2003, available at [http://web.amnesty.org/library/pdf/IOR300032003ENGLISH/\\$File/IOR3000303.pdf](http://web.amnesty.org/library/pdf/IOR300032003ENGLISH/$File/IOR3000303.pdf); Press Release, Amnesty International, Global Arms Trade Dangerously Unregulated (9 Oct. 2003), available at http://www.controlarms.org/latest_news/launch_pr.htm.

10. Shannon Lindsey Blanton, *Foreign Policy in Transition? Human Rights, Democracy, and U.S. Arms Transfers*, 49 INT'L STUDIES Q. 647, 660 (2005).

11. Shannon Lindsey Blanton, *Promoting Human Rights and Democracy in the Developing World: US Rhetoric versus US Arms Exports*, 44 AM. J. POL. SCI. 123 (2000); Shannon Lindsey Blanton, *Instruments of Security or Tools of Repression? Arms Imports and Human Rights Conditions in Developing Countries*, 36 J. PEACE RES. 233 (1999); Cassidy Craft & Joseph P. Smaldone, *The Arms Trade and the Incidence of Political Violence in Sub-Saharan Africa*, 39 J. PEACE RES. 693 (2002); Gregory S. Sanjian, *Promoting Stability or Instability? Arms Transfers and Regional Rivalries, 1950–1991*, 43 INT'L STUD. Q. 641 (1999); Mohammed Ayoub, *The Security Problematic of Third World*, 43 WORLD POL. 257, 274 (1991); Michael T. Klare, *Wars in the 1990s: Growing Firepower in Third World*, 46 BULL. ATOM. SCIENTIST 9 (1990); William D. Hartung & Bridget Moix, *Deadly Legacy: US Arms to Africa and the Congo War*, WORLD POL. INST. ARMS TRADE RES. CENTER (2000), available at www.worldpolicy.org/projects/arms/reports/congo.htm. A statistical study conducted by David Kinsella and Howard K. Tillema argues that while the arms supplies by the United States into Middle East had a stabilizing effect, this was not the case for Soviet arms transfers. See David Kinsella & Howard K. Tillema, *Arms and Aggression in the Middle East: Overt Military Intervention 1948–1991*, 39 J. CONFLICT RES.

relation between arms trade and human rights forced supplier countries, which correspond mostly to the most developed countries of the world, to enact various laws and codes at the national and international level. For example, supplier countries enacted laws prohibiting or “discouraging” arms transfers to countries with poor human rights records. Despite all of these laws and codes, supplier countries do transfer conventional weapons to countries with dubious human rights records. This practice, in most cases, eventually creates a cycle that worsens human rights conditions in these recipient countries.

This article is composed of eight sections. After this brief introduction, the second section introduces the article’s methodology. The third and fourth sections examine the top ten suppliers of conventional arms between 1999 and 2003, followed by the top sixty recipients of conventional arms during these years and their share in global arms transfers, as well as human rights records in these countries. The fifth section discusses arms exports laws and codes in major supplier countries at the domestic and international levels. While discussing these laws, special attention is paid to whether these laws and codes consider human rights conditions in recipient countries. The sixth and seventh sections analyze the changing dynamics of the post-Cold War global arms trade, including the black and gray markets for small arms. Finally, the conclusion reiterates the findings and arguments and describes current attempts to regulate conventional arms transfers globally.

While making this analysis regarding arms transfers to countries with poor human rights and conflict zones, I develop two main arguments as factors that contribute to the continuation of arms transfers to such countries. First, as will be elaborated in detail below, national and international codes are crafted in a way that creates an enormous space in which supplier countries can maneuver. The laws, whether national or international, are in place in theory; but when one looks at the way in which these laws are crafted, they are open to interpretation. Second, with the end of the Cold War, the global conventional arms market has become an unprecedented buyer’s market. The Cold War created a decline in domestic military expenditures and forced arms manufacturers to look beyond their own domestic markets. This decline was much worse in the countries of the former Soviet Union and in some Eastern European countries. These countries ended up looking for customers around the world more aggressively and sometimes more illegally and more illicitly than ever before. These legal, illegal, and illicit alternatives not only reduce compliance with laws and regulations that are

306 (1995). However, Jochen Mayer and Ralph Rotte, by using a more sophisticated statistical method, have argued that stability in the Middle East was provided only when there was a low level of arms supplies. Higher levels of supplies, they argued, created instability in the region. See Jochen Mayer & Ralph Rotte, *Arms and Aggression in the Middle East*, 43 J. CONFLICT RES. 45 (1999).

supposed to impede arms transfers, but faced with competition, legal and illegal, major supplier countries are more unwilling to come up with tighter laws and regulations at national and international levels that might entirely halt transfers to countries with poor human rights records.

II. THE METHOD

This article utilizes several different databases and rankings. First, to rank top supplier and recipient countries between 1999 and 2003, the article uses the rankings provided by the Stockholm Peace Research Institute (SIPRI) in Chapter 12 of their *SIPRI Yearbook 2004: Armaments, Disarmament and International Security*. Because the article examines whether the top ten suppliers of global arms were equipped with laws and regulations, both at the national and international level, it took human rights conditions in the recipient country into consideration; the laws by which these countries were bound nationally and internationally were checked from the National Export Control Table, which can be accessed at the SIPRI website.¹² The results are reflected in Figure 1 below.

Second, the article determines the top arms recipients with problematic human rights records by matching the top sixty recipients rankings between the years 1999 and 2003 with the rankings of the Freedom House between 1999 and 2003 (see Figure 2).¹³ The article utilizes the same categorizations (*Free*, *Partly Free*, and *Not Free*) used in the *Freedom House Report*.¹⁴

Furthermore, because conflicts and human rights violations go hand in hand, the article tracks whether an internal or an external conflict existed in these countries between 1999 and 2003. For this, the author mainly relied on the International Peace Research Institute's armed conflict database.¹⁵

III. THE SUPPLIERS

The end of the Cold War led to a decline in the volume of arms transfers around the world. In 1988, \$35 billion worth of arms was transferred globally.¹⁶ This number was reduced to \$20 billion in 1995 and has been

12. SIPRI, National Export Control Table, available at http://projects.sipri.se/expcon/natexpcon/country_matrix.html.

13. Freedom House, Freedom in the World Comparative Rankings: 1973–2005, Freedom in the World, available at <http://www.freedomhouse.org/template.cfm?page=15&year=2005>.

14. *Id.*

15. International Peace Research Institute, Oslo (PRIO), Active Conflicts 2003, available at http://www.prio.no/cwp/armedconflict/current/active_conflicts_2003.pdf.

16. Björn Hagelin et al., *International Arms Transfers*, in SIPRI YEARBOOK 2003: ARMAMENTS, DISARMAMENT AND INTERNATIONAL SECURITY 440, fig. 13.1 (2003) [hereinafter SIPRI YEARBOOK 2003].

fluctuating around this level since then.¹⁷ Since the end of the Cold War, the lion's share of the arms trade belongs to the United States. According to SIPRI estimates, between 1999 and 2003 the United States accounted for the 34 percent of all global conventional arms transfers.¹⁸ During the same period, Russia ranked second with a 30 percent share, followed by France with a 7.2 percent share in global arms transfers.¹⁹ Germany and the United Kingdom ranked fourth and fifth, respectively, with almost a 5.9 percent and a 4.8 percent share each.²⁰ Ukraine's share was almost 2.5 percent, followed by Italy at seventh with a 1.9 percent share.²¹ China, the largest importer of arms, with a 1.7 percent share, ranked as the eighth supplier.²² The Netherlands and Canada ranked ninth and tenth, respectively, with a 1.4 percent share each.²³ All ten countries accounted for almost 91 percent of the global arms transfers between 1999 and 2003.²⁴

FIGURE I
The Top Ten Suppliers and The Treaties That They Have Signed²⁵

		<i>Arms Transfers to the World (1999–2003)</i>	<i>National Legislation</i>	<i>EU Code of Conduct</i>	<i>Wassenaar Agreement</i>	<i>OSCE</i>	<i>UN Register (Regular Contribution)</i>
1	USA	34.0%	Yes	NA	X	X	X
2	Russia	30.0%	No	NA	X	X	X
3	France	7.2%	Yes	X	X	X	X
4	Germany	5.9%	Yes	X	X	X	X
5	UK	4.8%	Yes	X	X	X	X
6	Ukraine	2.5%	No	NA	X	X	X
7	Italy	1.9%	Yes	X	X	X	X
8	China	1.7%	No	NA	-----	-----	-----
9	Netherlands	1.4%	Yes	X	X	X	X
10	Canada	1.4%	Yes	NA	X	X	X
Total For Top Ten Supplier Countries		90.8%					

17. *Id.*

18. Derived from Björn Hagelin et al., *Appendix 12A: The Volume of Transfers of Major Conventional Weapons: By Recipients and Suppliers, 1999–2003*, in SIPRI YEARBOOK 2004: ARMAMENTS, DISARMAMENT AND INTERNATIONAL SECURITY 479–80 (2004) [hereinafter SIPRI YEARBOOK 2004].

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* See Figure I.

25. *Id.* at 479–80; SIPRI, Table of Membership of Multilateral Military Related Export Control Regimes, National Export Control Table, available at <http://projects.sipri.se/expcon/nat-expcon/countrymatrix.html>.

All top supplier countries have domestic laws regulating arms exports. However, only the laws in the United States, France, Germany, the United Kingdom, Italy, the Netherlands, and Canada stipulate that when exporting arms, the licensing authorities must consider human rights records in the recipient country.²⁶ With the exception of China, all top supplier countries have become parties to various international codes and regimes. These international regimes and codes, again to varying degrees, also urge these countries to take human rights conditions in recipient countries into consideration when transferring arms. These regimes and codes are: the European Union (EU) Code of Conduct,²⁷ the Wassenaar Agreement,²⁸ the Organization for Security and Cooperation in Europe (OSCE) Principles,²⁹ and the United Nations (UN) Register.³⁰ After examining the top suppliers and recipients, the article examines these national laws and international regimes and how they approach the issue of human rights in the recipient country to which arms are being transferred.

IV. THE RECIPIENTS: THE CLIENTS: THE “BEST” BUYERS

Figure 2, below, details the top sixty recipients of arms in the world between 1999 and 2003, human rights conditions in these countries, and the presence or the absence of a conflict (internal or external) in these countries. These top sixty countries received almost 96 percent of the arms globally transferred during this period. In this list there are thirty countries classified as *Not Free* or *Partly Free* between 1999 and 2003 in the Freedom House Ratings. Furthermore, among the top sixty recipients, there are fourteen countries that were involved in some form of conflict between 1999 and 2003. Two of these countries, namely India and Israel, are considered *Free* but were involved in various degrees of conflict during these years. In summary, among the top sixty, twelve countries have both poor human rights records and have been engaged in conflict.

These thirty countries accounted for almost 46 percent of the \$40 billion worth of arms delivered globally between 1999 and 2003.³¹ In other words, almost half of the global arms trade ended up in the hands of countries with poor human rights records.

26. *Id.*

27. European Union (EU) Code of Conduct, available at <http://www.fas.org/asmp/campaigns/code/euclidtext.htm>.

28. SIPRI, Public Statement, 2005 Plenary Meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, 13–14 Dec. 2005, available at http://projects.sipri.se/expcon/wass_elements.htm.

29. See generally Organization for Security and Cooperation in Europe (OSCE), available at <http://www.osce.org/>.

30. *General and Complete Disarmament, Transparency in Armaments*, U.N. GAOR, 46th Sess., U.N. Doc. A/RES/46/36 (1991).

31. See Figure II.

FIGURE II
The Top Sixty Recipients of Arms Between
1999 and 2003 and Their Human Rights Records³²

		<i>1999–2003 Arms Deliveries</i>	<i>1999–2003 % of All Global Deliveries</i>	<i>Freedom House Ratings 1999–2003</i>	<i>History of Conflict Between 1999–2003</i>
1	China	11800m	13.4%	NF	No
2	India	7843m	8.9%	F	Yes
3	Greece	4409m	5.0%	F	No
4	Turkey	3497m	4.0%	PF	Yes
5	UK	3256m	3.7%	F	No
6	Egypt	3235m	3.7%	NF	No
7	Taiwan	3084m	3.5%	F	No
8	S. Korea	2855m	3.2%	F	No
9	Pakistan	2525m	2.9%	NF	Yes
10	Saudi Arabia	2420m	2.7%	NF	No
11	Australia	2394m	2.7%	F	No
12	Israel	2195m	2.5%	F	Yes
13	UAE	2120m	2.4%	NF	No
14	Algeria	2095m	2.4%	NF	Yes
15	Japan	1795m	2.0%	F	No
16	Iran	1640m	1.9%	NF	No
17	Finland	1476m	1.6%	F	No
18	Canada	1382m	1.5%	F	No
19	USA	1282m	1.5%	F	No
20	Singapore	1282m	1.5%	PF	No
21	Italy	1270m	1.4%	F	No
22	Malaysia	1205m	1.4%	PF	No
23	Brazil	1139m	1.3%	PF/F	No
24	Spain	1066m	1.2%	F	No
25	Netherlands	954m	1.1%	F	No
26	Poland	925m	1.0%	F	No
27	Angola	839m	1.0%	NF	Yes/No
28	Yemen	821m	0.9%	NF/PF	No
29	Indonesia	769m	0.9%	PF	Yes
30	Jordan	752m	0.8%	PF	No
31	Norway	694m	0.8%	F	No
32	Argentina	694m	0.8%	F/PF	No
33	Thailand	680m	0.8%	F	No
34	Switzerland	652m	0.7%	F	No
35	Bangladesh	611m	0.7%	PF	No
36	Chile	571m	0.6%	F	No
37	Colombia	490m	0.6%	PF	No
38	Myanmar	478m	0.5%	NF	Yes
39	Germany	477m	0.5%	F	No

Continued on pg. 365

32. Hagelin et al., *Appendix 12A: The Volume of Transfers of Major Conventional Weapons: By Recipients and Suppliers, 1999–2003*, *supra* note 18, at 475–76. Additional data was received from SIPRI via e-mail. Freedom House, *Freedom in the World Comparative Rankings: 1973–2005*, *Freedom in the World*, *supra* note 13; PRIO, *Active Conflicts 2003*, *supra* note 15.

FIGURE II, *continued*
The Top Sixty Recipients of Arms Between
1999 and 2003 and Their Human Rights Records

		<i>1999–2003 Arms Deliveries¹</i>	<i>1999–2003 % of All Global Deliveries</i>	<i>Freedom House Ratings 1999–2003</i>	<i>History of Conflict Between 1999–2003</i>
40	Syria	470m	0.5%	NF	No
41	New Zealand	450m	0.5%	F	No
42	Sri Lanka	423m	0.5%	PF	Yes
43	Bahrain	403m	0.5%	NF/PF	No
44	Sweden	391m	0.4%	F	No
45	Mexico	383m	0.4%	PF/F	No
46	Vietnam	376m	0.4%	NF	No
47	Kazakhstan	373m	0.4%	NF	No
48	Cyprus	372m	0.4%	F	No
49	Kuwait	365m	0.4%	PF	No
50	Morocco	357m	0.4%	PF	No
51	Denmark	324m	0.4%	F	No
52	Venezuela	283m	0.3%	PF	No
53	France	273m	0.3%	F	No
54	Peru	264m	0.3%	PF/F	No
55	Eritrea	254m	0.3%	NF	Yes
56	Sudan	239m	0.3%	NF	Yes
57	Afghanistan	226m	0.3%	NF	Yes
58	Ethiopia	220m	0.2%	PF	Yes
59	Congo	218m	0.2%	NF/PF	Yes/No
60	Macedonia	216m	0.2%	PF	No
		84552m	96%		

When transfers to these recipient countries in the top ten are considered, Russia emerges as the major supplier to China and India, while the United States emerges as the major supplier to Turkey, Egypt, and Saudi Arabia.³³ Russia's emergence as the top supplier to China and India is mainly due to the sanctions imposed on China by the United States and the European Union, and on India by the United States.³⁴

The United States and the European Union imposed an arms embargo on China in the aftermath of the Tiananmen Square Massacre in 1989, pointing out severe human rights violations in that country.³⁵ Yet Russia, by becoming the top and the only supplier, was quite effective in filling the void that

33. See Figure III.

34. Björn Hagelin et al., *Transfers of Major Conventional Weapons*, in SIPRI YEARBOOK 2000: ARMAMENT, DISARMAMENT AND INTERNATIONAL SECURITY 29–30 (2000) [hereinafter SIPRI YEARBOOK 2000].

35. Gabrielle Kohlmeier, *EU Eyes Lifting China Arms Embargo* (2004), available at http://www.armscontrol.org/act/2004_09/EU.asp.

the Westerners had left. The United States also imposed sanctions on India following a nuclear test in May 1998.³⁶ Sanctions on Pakistan were imposed in 1979, 1990, 1998, and finally in 1999 after Pervez Musharraf toppled the civilian government with a military coup.³⁷ After 11 September 2001, with the exception of the sanctions imposed on Pakistan in 1999,³⁸ all sanctions were lifted by the United States; and Pakistan along with India were declared allies in the “War Against Terror.”³⁹ Meanwhile, like in the case of China, Russia became the major supplier for India, while arms to Pakistan were provided by China, France, Ukraine, and Italy during the sanction years.⁴⁰

FIGURE III
The Suppliers and the Recipients⁴¹

<i>Suppliers</i>	<i>Recipients with Poor Human Rights Records and/or Conflict</i>
USA	Turkey,* Egypt,* Saudi Arabia,* Israel,* Singapore,* Jordan, Bangladesh, Colombia,* Bahrain,*
Russia	China,* India,* UAE, Algeria,* Iran,* Malaysia, Angola, Yemen,* Indonesia, Bangladesh,* Colombia, Myanmar,* Syria,* Sri Lanka, Vietnam,* Kazakhstan,* Peru,* Eritrea,* Sudan,* Ethiopia
France	Pakistan, Saudi Arabia, UAE,* Indonesia, Kuwait, Morocco, Venezuela, India, Malaysia, Turkey, Jordan, Yemen
Germany	Turkey, Egypt, Israel, Indonesia, India
UK	Malaysia,* Indonesia, Jordan,* Kuwait, Bahrain, UAE, China, India, Saudi Arabia
Ukraine	Pakistan, Algeria, Iran, Angola, Myanmar, Sri Lanka, Ethiopia,
Macedonia, Jordan, UAE	
Italy	Turkey, Pakistan, Singapore, Malaysia, Bangladesh, China, India, Saudi Arabia, Singapore
China	Egypt, Pakistan, Bangladesh, Myanmar, Kuwait,
Netherlands	India, Bangladesh, Turkey, UAE, Indonesia, Malaysia
Canada	Saudi Arabia, Sri Lanka, Venezuela,

*Denotes a major supplier (more than 50% of all arms transfers) to this country.

36. Press Release, The White House: Office of the Press Secretary, India Sanctions (13 May 1998), available at <http://www.mac.doc.gov/sanctions/wh-state.htm>.

37. Howard Diamond, U.S. Imposes Sanctions on Pakistan, N. Korea Following Missile Test (1998), available at http://www.armscontrol.org/act/1998_04/sanap98.asp; Robert Gard, India-Pakistan Sanctions Legislation Fact Sheet (2001), available at <http://www.armscontrolcenter.org/archives/000124.php>.

38. Alex Wagner, Bush Waives Nuclear-Related Sanctions on India, Pakistan (2001), available at http://www.armscontrol.org/act/2001_10/sanctionsoct01.asp. The sanctions imposed in 1999 prohibit Pakistan from receiving American loans and military training.

39. *Bush Lifts Sanctions on India, Pakistan*, *supra* note 8.

40. See Figure III.

41. Hagelin, et al., *Appendix 12A: The Volume of Transfers of Major Conventional Weapons: By Recipients and Suppliers, 1999–2003*, *supra* note 18, at 474–80. Additional data were received from SIPRI via e-mail.

As demonstrated in Figure 3, between 1999 and 2003, the United States supplied arms to nine of the thirty-two countries classified as *Not Free* or *Partly Free* and/or with a conflict. Russia provided arms to twenty countries; France to twelve; Germany to five; the United Kingdom to nine; Ukraine to ten; Italy to nine; China to five; the Netherlands to six; and Canada to three. While Russia ranked second and supplied 30 percent of all the arms transferred globally between 1999 and 2003, it had the most diversified client portfolio.

Why do major suppliers, given their diversified portfolios, and despite the proven adverse effects of supplying arms to countries in conflict and/or with poor human rights records, continue supply weapons to these nations?

There are several reasons. First, as described below, almost all of the major suppliers follow domestic and international codes that, to some degree, force the officials of the state issuing arms export licenses to consider human rights conditions in the recipient country. However, these laws and regulations fail to stop the arms transfers to such countries because of their elastic wording. Second, the end of the Cold War contributed to a decline in domestic military expenditures in the major supplier countries, leading manufacturers and suppliers of arms to market their products more aggressively in the global market. The situation was more acute for the former communist countries because of their dependency on arms exports as their major export. This dependency forced them to pursue marketing policies, sometimes illegal and illicit, especially in small arms.

V. THE LAWS

As stated above, with the exception of Russia, China, and Ukraine, all top ten supplier countries have national legislation that urge the export license-issuing authorities to consider human rights conditions, albeit to varying degrees, in recipient countries. These laws have one point in common: their openness to interpretation that creates uncertainty about whether the law in question will be applied. This, in a sense, indicates the unwillingness of countries with greater stakes in global arms transfers to create stricter laws.

A. National Codes on Arms Transfers in Top Supplier Countries

Among supplier countries, the United States is probably the country with the most sophisticated laws on arms exports that leave the country either as a foreign military sales (FMS) (i.e., sale directly from the US government to another government) or direct commercial sale (i.e., sale from US arms manufacturers to public or private persons around the world). There are

different sets of laws and regulations that wholly or partially govern US arms exports: The Foreign Assistance Act (FAA) of 1961,⁴² the Arms Export Control Act (AECA) of 1976, which are located respectively in Chapters 32 and 39 of Title 22 of the United States Code,⁴³ the International Traffic in Arms Regulations (ITAR),⁴⁴ the Export Administration Act (EAA) of 1979,⁴⁵ and parts of the Foreign Operations Appropriations Act.⁴⁶

The Foreign Assistance Act of 1961 regulates foreign (economic and military) assistance from the United States to other countries. The Act states that the foreign policy goal of the United States is "to promote the increased observance of internationally recognized human rights by all countries."⁴⁷ The second part of the Act stipulates that "no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."⁴⁸ However, the very same paragraph grants the President the right to make exceptions when necessary.⁴⁹

The Arms Export Control Act of 1976 is considered the main law that directly regulates the arms exports of the United States.⁵⁰ Section 2751 of the Code states that arms transfers can only take place if they are "consistent" with the principles set forth in Section 2304.⁵¹ Section 2778 of Chapter 39 authorizes the President to regulate the arms exports of the United States.⁵² This authority, however, has been delegated to the State Department and put

42. 22 U.S.C. § 2304 (2002).

43. LORA LUMPE & JEFF DONARSKI, *THE ARMS TRADE REVEALED: A GUIDE FOR INVESTIGATORS AND ACTIVISTS* (1998), available at <http://www.fas.org/asmp/library/handbook/WaysandMeans.html>. In addition to these laws, in June 1999, there was an attempt to create a Code of Conduct for American arms exports. The resolution, HR 2269, contained clauses that would prohibit the sale of American arms to countries that did not "promote democracy, respect human rights and participate in UN Register of Conventional Arms." H.R. 2269, 106th Cong. (1999). However, the bill in its original shape did not become a law. A diluted version of the bill that was enacted in November 1999 stated that the American president "shall attempt to achieve the foreign policy goal of an international arms sales code of conduct . . . [and] take the necessary steps to begin negotiations within appropriate international fora not later than 120 days after the date of the enactment of this Act." Pub. L. 106-13, div. B, § 1000(a)(7), 29 Nov. 1999, 113 Stat. 1536, 1501A-508. See also Emanuela Gillard, *What is Legal? What is Illegal? A Background Paper on the ATT Convention, Limitations on Transfers of Small Arms Under International Law* (2003), available at <http://www.grip.org/bdg/g4509.htm>; Jonathan T. Stoel, *Codes of Conduct on Arms Transfers—The Movement Toward a Multilateral Approach*, 31 L. & POL'Y INT'L BUS. 1291, 1291-99 (2000).

44. LUMPE & DONARSKI, *supra* note 43.

45. *Id.*

46. *Id.*

47. 22 U.S.C. § 2304, *supra* note 42.

48. *Id.*

49. *Id.*

50. LUMPE & DONARSKI, *supra* note 43.

51. 22 U.S.C. § 2751 (1999).

52. 22 U.S.C. § 2778 (2004).

into practice as the International Traffic in Arms Regulations.⁵³ The Export Administration Act of 1979, on the other hand, regulates the exports of dual-use goods.⁵⁴ Neither ITAR nor EAA contains direct references to human rights in recipient countries.

The final set of regulations that conditions US arms transfers upon human rights conditions in recipient countries (though not exports specifically) is the "Leahy Law" within the Foreign Operations Appropriations and Defense Appropriations Acts.⁵⁵ This law, introduced by Vermont Senator Patrick Leahy, prohibits American military assistance to "any unit of the security forces of a foreign country if the Secretary of State [or the Secretary of Defense] has credible evidence that such unit has committed gross violations of human rights."⁵⁶ The Leahy Amendment was first introduced as part of the International Narcotics Control Program of the State Department. In 1998, the law was applied to all security assistance programs that were part of the Foreign Operations Appropriations Act.⁵⁷ In 1999, it became part of the Defense Department Appropriations Act.⁵⁸

Unfortunately, the Leahy Law has two weaknesses. First, the language is open to interpretation. The Foreign Operations Appropriations Act, for example, allows the Secretary of State to resume funding if the country with human rights violations in question "is taking effective measures to bring the responsible members of the security forces unit to justice."⁵⁹ The Defense Appropriations Bill includes similar language, authorizing the Secretary of Defense to proceed with the funding if "all necessary corrective steps have been taken."⁶⁰ The State Department eventually agreed that the law's word-

53. LUMPE & DONARSKI, *supra* note 43. International Traffic in Arms Regulations (ITAR) lists several countries such as Afghanistan, Iraq, etc., (of course, along with exceptional circumstances) to which US arms exports are prohibited. See, e.g., U.S. Dept. of State, ITAR, Part 126—General Policies and Provisions, available at http://pmdtc.org/docs/ITAR/2005/22cfr126_Part_126.pdf.

54. The Export Administration Act of 1979 (EAA) was extended several times in the past and last expired in 1994. The US President maintained EAA by executive order. A new EAA was introduced in Congress in January 2001 but did not become law. The EAA of 2001 contains very equivocal language regarding human rights, stating several times that the goal of the United States should be to "promote . . . respect for human rights." See S. REP. NO. 107-10, 107th Cong., 1st Sess. (2001), available at <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=sr010&dbname=cp107&>.

55. Foreign Operations Appropriations Act of 2002, Pub. L. No. 107-115, § 556, 115 Stat. 2118 (2002), available at <http://leahy.senate.gov/issues/humanrights/107-115.html>; Foreign Operations Appropriations Act of 2001, Pub. L. 106-429, § 563, 114 Stat. 1900 (2001), available at <http://www.ciponline.org/facts/leahy.htm>.

56. See, e.g., *id.*

57. Center for International Policy, Limitation on Assistance to Security Forces, available at <http://www.ciponline.org/facts/leahy.htm>.

58. *Id.*

59. *Id.*

60. See, e.g., Department of Defense Appropriations Bill of 2002, Pub. L. No. 107-117, § 8093, 115 Stat. 2230 (2002), available at <http://leahy.senate.gov/issues/humanrights/107-117.html>.

ing should indicate that when the individual responsible for human rights violations is "expelled" from the "unit," the funding of the "unit" could continue.⁶¹ The second weakness of the Leahy Amendment is that it is not a permanent feature of either the Foreign Operations Appropriations Act or the Defense Operation Act. The amendment must be reintroduced every year with the respective Foreign Operations Appropriations and Defense Appropriations Acts. The Leahy Law has been applied to military assistance to several countries. For example, assistance to Colombia has been condition on the certification of the improvement of human rights in the country by the US Secretary of State.⁶² However, the efficiency of this certification procedure has been debated by various nongovernmental organizations (NGOs). In a July 2003 statement, Human Rights Watch (HRW) argued that these certifications were being issued by the Secretary of State without improvement in human rights conditions.⁶³

In 1939, France began drafting a series of laws to regulate its arms exports.⁶⁴ The "Statement on French policy on Export Controls for Conventional Arms and Dual-use Items Submitted to the Wassenaar Arrangement" stipulates that France would exhibit "respect for the Purposes and Principles of the Charter of the United Nations, human rights, embargoes and other globally-agreed restrictive measures, arms control, and non-contribution to regional instability or to the prolongation of ongoing armed conflicts."⁶⁵ Furthermore, the same "Statement" notes that France "complies with the criteria laid down by the United Nations, the OSCE and the European Council" and "[respects] human rights in the country of final destination."⁶⁶ Similarly, before recommending a transaction to the Prime Minister, the Committee on the Export of War Weapons (CIEEMG) should evaluate human rights conditions in the recipient country.⁶⁷

Like France, the United Kingdom has laws governing arms exports dating from 1939.⁶⁸ The most recent of these laws that makes direct reference to

61. Center for International Policy, Limitation on Assistance to Security Forces, *available at* <http://www.ciponline.org/facts/leahy.htm>.

62. See, e.g. Foreign Operations Appropriations Bill of 2002, *supra* note 55, § 567; see also Center for International Policy, Pub. L. 107-115, FY 2002 Foreign Operations Appropriations Bill, 2002 Conditions on Aerial Fumigation Programs in Colombia, *available at* <http://leahy.senate.gov/issues/foreign%20policy/107-115-colombia.html>.

63. Human Rights Watch, Colombia: Human Rights Certification Under Public Law 108-7, *available at* <http://www.hrw.org/background/america/colombia-certification5.htm>.

64. SIPRI, France: Policy on Export Controls and Conventional Arms, Export Controls, *available at* <http://www.sipri.org/contents/expcon/frenchpolicy.html>.

65. *Id.*

66. *Id.*

67. SIPRI, France: National Policy Statement, Export Controls, *available at* <http://www.sipri.org/contents/expcon/fraosce.html>.

68. British American Security Information Council, Export Control in the Framework Agreement Countries, *available at* <http://www.basicint.org/pubs/Research/2001ExportControls2.htm>.

human rights conditions in the recipient countries is the Export Control Act of 2002. This legislation was created as a result of the Labor Party's campaign promise to overhaul the arms exports laws when it was revealed that various British companies were involved in arms and technology transfers to Iraq in the 1980s and 1990s.⁶⁹ The Export Control Act states:

[E]xport controls may be imposed in relation to any goods the exportation or use of which is capable of having a relevant consequence. . . . [T]ransfer controls may be imposed in relation to any technology the transfer or use of which is capable of having such a consequence. . . . [T]echnical assistance controls may be imposed in relation to any technical assistance the provision or use of which is capable of having such a consequence. . . . [T]rade controls may be imposed in relation to any goods the acquisition, disposal, movement or use of which is capable of having such a consequence.⁷⁰

In these articles the phrases "having a relevant consequence" or "such a consequence" refer to a wide range of instances ranging from "having an adverse effect on the national security of the United Kingdom and other countries" to the "breaches of international law and human rights."⁷¹ Although there is a direct reference to human rights in this law, the ambiguous wording "may be imposed" creates uncertainty about the applicability of the law.⁷²

Italian laws that regulate arms transfers and exports, enacted in 1990, also make a direct reference to human rights conditions in the recipient country. Italian Law 185 "forbids" arms exports to states "whose governments are responsible for proven violations of international human rights conventions."⁷³

German laws regarding arms exports and transfers are based on several different pieces of legislation: the German Weapons Control Act of the Basic Law;⁷⁴ the War Weapons Reporting Ordinance of 1995;⁷⁵ the Foreign Trade and Payments Act of 1961;⁷⁶ the Foreign Trade and Payments Ordinance of 1986;⁷⁷ and the Policy Principles of the Government of the Federal Republic of Germany for the Export of War Weapons and other Military Equipment.⁷⁸ Among all of these, only the Policy Principles refer to human rights conditions in the recipient country.

69. AMNESTY INTERNATIONAL, *A CATALOGUE OF FAILURES: G8 ARMS EXPORTS AND HUMAN RIGHTS VIOLATIONS*, *supra* note 9.

70. SIPRI, UK: Export Control Act, 2002, Export Controls, *available at* <http://www.sipri.org/contents/expcon/act2002.html>.

71. *Id.*

72. *Id.*

73. SIPRI, Italy: Provisions Governing the Export, Import, and Transit of Armaments, Export Controls, *available at* <http://www.sipri.org/contents/expcon/ita90law.html>.

74. SIPRI, Germany: Export Controls, *available at* <http://www.sipri.org/contents/expcon/germany.html>.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

The Policy Principles of the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment, introduced in 1982 (and later amended in 1999), are to be the “guidelines” for German officials dealing with arms export licenses, and thus “limit . . . discretion open to them.”⁷⁹ These Policy Principles are composed of three sections. The first section, “General Principles,” states that the goal of German exports is to “secur[e] respect for human rights and promot[e] sustainable development in all parts of the world.”⁸⁰ It further states that human rights conditions in recipient countries are a “key factor” in the issuing of exports licenses.⁸¹ According to these Policy Principles, export licenses “will not be granted where there are reasonable grounds to suspect that they may be used for internal repression as defined in the EU Code of Conduct for Arms Exports, or the sustained and systematic abuse of human rights.”⁸²

However, the second section, which sets the guidelines for arms exports to “NATO members, EU members, and countries with NATO-equivalent status,” has more ambiguous language regarding human rights conditions in recipient countries.⁸³ This section stipulates that

[the] Federal Government will raise objections against . . . exports where there are reasonable grounds to suspect that they may be used for internal repression as defined by the EU Code of Conduct for Arms Exports or the sustained and systematic abuse of human rights.⁸⁴

The third section of the Policy Principles dealing with arms transfers to “other countries” uses the same ambiguous language:

Export licenses pursuant to the War Weapons Control Act and/or the Foreign Trade and Payments Act will not be granted where the internal situation in the country concerned precludes such action, e.g. in the case of armed conflict or where there are reasonable grounds for suspecting such exports may be used for internal repression or the sustained and systematic abuse of human rights. In this context the human rights situation in the recipient country is a major factor to be considered.⁸⁵

79. SIPRI, Germany: Response to the Questionnaire on OSCE Policy for the Export of Conventional Arms, Export Controls, *available at* <http://www.sipri.org/contents/expcon/frgosce.html>.

80. SIPRI, Germany: Policy Principles for the Export of Military Equipment, Export Controls, *available at* <http://www.sipri.org/contents/expcon/frg-guide.html>.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

While Dutch laws reiterate “the international commitments” of the country,⁸⁶ the latest available arms export policy report issued by the Dutch Ministry of Economic Affairs and Foreign Affairs states that “applications for licenses for the export of military equipment are assessed on a case-by-case basis against the eight criteria of the arms export policy with due consideration for the nature of the product, its country of final destination and end user.”⁸⁷ The same report goes on to list the eight criteria of the EU Code of Conduct, which include “the respect of human rights in the country of final destination.”⁸⁸

Canadian arms exports are regulated by “guidelines” set forth in the Export and Import Act of the country. The Act states that

Canada closely controls the export of military goods and technology to countries that . . . have governments that have a persistent record of serious violations of the human rights of their citizens, unless it can be demonstrated that there is no reasonable risk that the goods might be used against the civilian population.⁸⁹

By adding the “unless” clause, Canadian laws, like the laws of other nations, create room for interpretation. Yet when it comes to exporting firearms, Canada has a slightly different procedure. According to the Canadian Automatic Firearms Country Control List, Canadian manufacturers can sell their automatic firearms to only sixteen countries.⁹⁰

Among major supplier countries, only Russian, Chinese, and Ukrainian arms exports laws do not directly refer to human rights conditions in the recipient country. The closest that Russian law comes to mentioning human rights is in Article 6 of the Federal Law of the Russian Federation on Military-Technical Cooperation of the Russian Federation With Foreign States. This article stipulates, again very ambiguously, that the Russian president will work to “support the execution of decisions of the Security Council of the United Nations on action to maintain or restore international peace and security and also to protect the national interests of the Russian Fed-

86. SIPRI, Netherlands, Export Control, *available at* <http://www.sipri.org/contents/expcon/netherlands.html>.

87. MINISTRY OF ECONOMIC AFFAIRS AND THE MINISTRY OF FOREIGN AFFAIRS, THE NETHERLANDS ARMS EXPORT POLICY IN 2002 (2003), *available at* <http://hei.unige.ch/sas/resources/Export%20Reports/Netherlands.2002.Eng.pdf>.

88. *Id.*

89. Department of Foreign Affairs and International Trade, Canada, Military and Technology, *available at* <http://www.dfait-maeci.gc.ca/trade/eicb/military/intro-en.asp?#introduction>; Department of Foreign Affairs and International Trade, Canada, Answers to Questions about Canada's Export Control on Military Goods, *available at* <http://www.dfait-maeci.gc.ca/trade/eicb/military/documents/20qa-eng.pdf>.

90. When the law was first initiated, this number was thirteen. See *id.*; Department of Justice, Canada, Automatic Firearms Country Control List (Export and Import Permits Act) SOR/91-575 (Can.), *available at* <http://laws.justice.gc.ca/en/E-19/SOR-91-575/100057.html>.

eration.”⁹¹ In a similar fashion, the Regulations of the People’s Republic of China on Administration of Arms Exports stipulate that while conducting the arms trade, “no injury to the peace, security and stability of the region concerned and the world as a whole” should ensue.⁹² Ukraine has various laws directing arms exports, none of which refer to human rights conditions in the recipient country.⁹³

In summary, there are various national laws that tell these major supplier countries to consider human rights conditions in recipient countries, albeit in ambiguous language. Similar language can be found in international codes. However, it can be argued that the language and usage of international codes are much more flexible than national laws and codes.

B. International Codes and Regimes on Arms Transfers

The end of the Cold War saw the creation of a series of laws and regimes in arms exports. These new laws and regimes were in part due to pressure from civil society, in part due to the optimistic environment created in the aftermath of the Cold War in which East-West conflict looked like a distant memory, and in part due to various arms transfer scandals. Unfortunately, these regimes, codes, and laws at the international level have not reached their stated goal of creating a more responsible legal environment for arms transfers.

1. *UN Register of Conventional Arms (1992)*

The goal of the UN Register of Conventional Arms was to create a medium in which both supplier and recipient states disclose information about their sales and purchases, as well as their domestic arms production and holdings.⁹⁴ It is not, in other words, a regime prohibiting or discouraging arms transfers to countries with imperfect human rights per se, but simply an exercise encouraging transparency of conventional arms transfers, as well as holdings and production. However, participating in the UN Register of Conventional Arms is voluntary, meaning that states may choose not to participate at all or that they can participate only when they wish to do so. This feature of

91. SIPRI, Federal Law of the Russian Federation on Military-Technical Cooperation of the Russian Federation With Foreign States, available at <http://projects.sipri.se/expcon/natexpcon/Russia/114law.htm>.

92. SIPRI, Regulations of the People’s Republic of China on Administration of Arms Exports, available at http://projects.sipri.se/expcon/natexpcon/China/chi_234reg.htm.

93. SIPRI, Ukraine, available at <http://projects.sipri.se/expcon/natexpcon/Ukraine/ukraine.htm>.

94. See, e.g., Foreign Affairs, Canada, The UN Conventional Arms Register, available at <http://www.dfait-maeci.gc.ca/arms/convweap2-en.asp>.

the Register has created debates about the efficiency and the effectiveness of the Register. In 1992, the first year of the Register, only ninety-five of the 179 existing members of the United Nations reported their arms purchases along with their domestic production and holdings.⁹⁵ The largest number of countries reporting was reached in 2001 when 126 of the 189 members of the United Nations reported to the UN Register.⁹⁶ In 2004, 115 countries had submitted a report to the Register.⁹⁷

All top ten supplier countries, with the exception of China, have regularly contributed to the Register since 1992. China, the eighth largest arms supplier and the largest arms recipient in the world between 1999 and 2003, stopped responding to the Register in 1998.⁹⁸ Although all of the major supplier countries, again with the exception of China, have responded to the Register, some major recipient countries have either not responded or simply responded sporadically. For example, Iran has not reported to the Register since 1998; and Egypt, Angola, Algeria, Syria, and Saudi Arabia have not disclosed any information to the Register on their arms transfers since the Register was launched in 1992. In the case of recipient countries, nondisclosure of arms transfers does not damage the Register greatly because the imports of these nonreporting countries are the exports of major supplier countries. This practice ensures disclosure of arms transfers.

2. Wassenaar Agreement (1996)

The Wassenaar Agreement came to life in 1996 after the dissolution of the Coordinating Committee for Multilateral Export Controls (COCOM) in 1994.⁹⁹ The main goal of the Wassenaar Agreement is to encourage “transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations” by creating “control lists.”¹⁰⁰ Currently, there are thirty-nine countries that have signed the Agreement. All top ten suppliers, with the exception of China, are parties to the Agreement.¹⁰¹

95. See United Nations Register of Conventional Arms, Composite Table, available at http://disarmament2.un.org/UN_REGISTER.NSF.

96. *Id.*

97. *Id.*

98. The Chinese mission to the UN reports this date as 1998, but according to UN Register it is 1996. See United Nations Register of Conventional Arms, Overall Participation, available at http://disarmament.un.org/UN_Register.nsf.

99. COCOM was established by the United States and its NATO allies during the Cold War as an “informal agreement” that made nonbinding recommendations on arms transfers to participating states. See Michael Lipson, *The Reincarnation of COCOM: Explaining Post- Cold War Exports Controls*, NON PROLIFERATION REV. 33–52 (1999).

100. SIPRI, Public Statement, 2005 Plenary Meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, *supra* note 28.

101. For the most recent list of members, see *id.*

The Wassenaar Agreement, in its original formulation, did not stipulate that the supplier country should take into consideration human rights conditions in the recipient country. However, an additional document entitled “Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons: Explanatory Note” defines some “non-binding” guidelines by listing two questions regarding human rights conditions in recipient countries.¹⁰² Although these added guidelines “encourage” the participant states to consider human rights conditions in recipient countries, they are not binding. It is simply “recommended” that signatory states take these guidelines into consideration.

3. *European Union (EU) Code of Conduct (1998)*

In the aftermath of the Gulf War, when arms transfers to Iraq by EU member states was revealed, the EU started work on a document that would guide arms exports and standardize the national laws and practices.¹⁰³ The EU Code of Conduct (the Code), which has eight criteria binding the members politically but not legally, was approved in June 1998.¹⁰⁴

While Criterion Two extensively deals with human rights conditions in the recipient country, the rest of the criteria encourage EU members to consider various conditions varying from “the behaviour of the buyer country with regard to the international community” to “internal” and “regional peace, security and stability” when transferring arms.¹⁰⁵ The member states are expected to apply these criteria while issuing or denying arms export licenses.

The language in the EU Code of Conduct regarding human rights in recipient countries is more clearly defined, but still subject to interpretation. Criterion 2 states that

Member States will:

a) not issue an export license if there is a clear risk that the proposed export might be used for internal repression;

102. SIPRI, Elements for Objective Analysis and Advice Concerning Potentially Destabilizing Accumulations of Conventional Weapons: Explanatory Note, available at <http://projects.sipri.se/expcon/waoban.htm>. These questions are:

Is there a clearly identifiable risk that the weapons might be used for the violation and suppression of human rights and fundamental freedoms? Does the state comply with internationally-recognised human rights, anti-terrorism and non-proliferation norms?

103. IAN ANTHONY, NATIONAL POLICIES AND REGIONAL AGREEMENTS ON ARMS EXPORTS (2000), available at <http://www.unidir.ch/pdf/articles/pdf-art155.pdf>; Council of Europe, Parliamentary Assembly, Recommendation 1382 (1998), available at <http://assembly.coe.int/Documents/AdoptedText/ta98/EREC1382.htm>.

104. SIPRI, EU Code of Conduct for Arms Exports, available at <http://projects.sipri.se/expcon/eucode.htm>.

105. *Id.*

b) exercise special caution and vigilance in issuing licenses, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU.¹⁰⁶

The ambiguity here lies in the criterium's wording. The phrase "might be used for internal repression" leaves the assessment of the possibility of repression to the supplier country. Furthermore, the Code does not specifically prohibit the transfer of arms to countries in which human rights violations are documented by various international institutions. Rather, it tells supplier countries simply to pay more attention, or as it is stated, to "exercise special caution and vigilance" in transfers to countries with human rights violations.¹⁰⁷ This wording makes the Code open to interpretation and limits its efficiency. Even David Andrews, then Irish Minister for Foreign Affairs, was reported to have expressed his disappointment with human rights the criterion when the Code was accepted.¹⁰⁸

In case of license denials, the EU members are expected to inform other members of these denials, as well as the reasons for the denials, "through diplomatic channels."¹⁰⁹ If another member decides to grant a license for an "identical transaction within three years," it has to inform the member state that previously denied the license and provide that state with reasons for the issuance of the license in question.¹¹⁰ The denials and the consultations regarding these denials, according to the EU Code of Conduct, should be done in "confidentiality."¹¹¹

Various NGOs also argued that there were flaws with the EU Code of Conduct in general. The most important flaw is that the Code is not legally binding on the EU member states.¹¹² Amnesty International in a 2004 report argued that the Code had various weaknesses, such as containing language very open to interpretation, a review mechanism that was not transparent enough, and no provisions for arms brokering, which in turn, created serious loopholes in the Code.¹¹³

106. *Id.*

107. *Id.*

108. Wade Boese, Arms Control Assoc., European Union Adopts Code of Conduct on Arms Sales, available at http://www.armscontrol.org/act/1998_05/wb2my98asp.

109. SIPRI, EU Code of Conduct for Arms Exports, *supra* note 104.

110. *Id.*

111. *Id.*

112. Oxfam, The EU Code of Conduct on the Arms Trade, Final Analysis Statement on Behalf of Oxfam, Christian Aid, Saferworld, Amnesty International, BASIC and WDM (1998), available at http://www.oxfam.org.uk/what_we_do/issues/conflict_disasters/conflict_eurocode_final.htm; AMNESTY INTERNATIONAL, UNDERMINING GLOBAL SECURITY: THE EUROPEAN UNION'S ARMS EXPORTS (2004), available at http://www.iansa.org/regions/europe/documents/undermining_security/flaws_eu.htm.

113. Amnesty International, EU Code of Conduct on Arms Exports, Criterion Two, AI Index: IOR61/007/2004 (14 Apr. 2004) available at <http://web.amnesty.org/library/Index/ENGLOR610072004?open&of=ENG-390>.

Furthermore, transparency and coordination problems have plagued the Code from its inception. It has been argued that because member states inform each other about the denials through “diplomatic channels” and “in confidentiality,” rather than publicly, this further limits the transparency of the arms exports.¹¹⁴ In the first five years of the EU Code of Conduct, for example, the Code did not even have a central database for denials issued for export licenses. The establishment of such a database was declared one of the goals in December 2003 in the Fifth Annual Report According to Operative Provisions 8 of the European Union Code of Conduct on Arms Exports. The very same Annual Report accepted that “there is still work to be done,” especially in the harmonization of reporting procedures and creation of a comparable statistical database.¹¹⁵

C. Principles Governing Conventional Arms Transfers adopted by the Organization for Security and Cooperation in Europe (OSCE) (1993)

The OSCE Principles, like other international agreements, are not binding. These principles simply recommend that the OSCE member states “exercise due restraint” through their national arms export control laws when transferring arms to other countries and “take into account . . . the respect for human rights and fundamental freedoms in the recipient country.”¹¹⁶ The OSCE Principles instruct the participating states to “avoid transfers which would be likely to be used for the violation or suppression of human rights and fundamental freedoms.”¹¹⁷ The OSCE Principles also assume member states will “reflect” these principles in their national codes regulating arms transfers.

The analysis of the domestic and international laws governing arms transfers of major supplier indicates that the real problem is not the absence of laws or codes. Rather, coupled with various transparency problems, the real problem is the ambiguous wording of these laws, which in turn creates serious loopholes for arms traders and officials issuing export licenses. Do national and international laws that both stipulate and encourage states to consider human rights in the recipient country work at all?

114. See BERNARDO MARIANI & ANGUS URQUHART, *TRANSPARENCY AND ACCOUNTABILITY IN EUROPEAN ARMS EXPORTS CONTROLS: TOWARDS COMMON STANDARDS AND BEST PRACTICE* (2000), available at <http://www.saferworld.org.uk/publications/pubtrans.htm>.

115. SIPRI, *FIFTH ANNUAL REPORT ACCORDING TO OPERATIVE PROVISIONS 8 OF THE EUROPEAN UNION CODE OF CONDUCT ON ARMS EXPORTS* (2003), available at http://projects.sipri.se/expcon/EU_Code_Report5.pdf.

116. ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, *PRINCIPLES GOVERNING CONVENTIONAL ARMS TRANSFERS* (1993), available at http://www.osce.org/documents/fsc/1993/11/4269_en.pdf.

117. *Id.*

Sometimes the media and the NGOs end up playing an important role by disclosing some of these controversial arms transfers to the public. In particular, the British media and NGOs have been quite critical of the current Labour government that promised "an ethical foreign policy" during their election campaigns but then made several controversial deals. In May 2002, according to a report that appeared in *The Independent*, British cabinet members were allegedly involved in persuading the Indian government to purchase £1 billion worth of Hawk fighter jets, despite the Kashmir conflict.¹¹⁸ The same report also mentioned that British jets sold to Indonesia were used during the conflict in East Timor in July 1999.¹¹⁹ In July 2002, the United Kingdom was plunged into a controversial debate when Foreign Secretary Jack Straw announced his government's intention to "'modify[y]' . . . the rules on arms sales to reflect the 'new reality' of the multinational defence projects."¹²⁰ Concurrently, British Prime Minister Tony Blair was accused of damaging the Kashmir talks by selling arms to both sides, he brushed these accusations aside by saying that "the idea that we shut down our defence industry in these circumstances I find bizarre."¹²¹

In Belgium, a country party to the Code, but not on the top ten suppliers list, the revelation of arms sales to Nepal in July 2002, a country with a poor human rights record, created a huge scandal. This scandal had two important consequences. First, it led to the resignation of the Finance Minister Magda Alvoet. Second, Belgium in October 2002 became the first EU country to make the EU Code of Conduct on Arms Exports a domestic law.¹²²

Several controversial arms transfers by the United States have also received considerable media and NGO attention. For example, the possible sale of \$3.5 billion worth of 145 Super Cobra attack helicopters to Turkey in the recent past was one such example.

In summary, given these lax domestic laws and international codes and regimes, it is difficult to expect that arms transfers to countries with poor human rights records will completely halt. However, in addition to the laws that govern arms transfers, the changing nature of the global arms market following the Cold War has complicated the situation.

118. Paul Eavis, *Analysis Arms Trade-A Question That Won't Go Away for Labour-Is It Ethical to Sell Arms to Countries At War?*, INDEP., 28 May 2002.

119. *Id.*

120. Jason Beattie, *Government Under Fire on Arms Sales*, SCOTSMAN, 8 July 2002.

121. *Id.* For other criticisms, see, e.g., Andrew Parker, *Ethical Dimension to be Pursued if Granted More Time*, FIN. TIMES, 25 May 2001.

122. Adam, *supra* note 7.

VI. THE CHANGING NATURE OF THE POST-COLD WAR GLOBAL ARMS MARKET

A recent Amnesty International report concluded that "it is short term profit making and political advantage that guide the bulk of the international arms trade."¹²³ That "profit" stems from the fact that arms trade is a big business for some countries. According to SIPRI estimates, despite the decline following the end of the Cold War, between 1995 and 2004, the annual world military expenditure has continued to fluctuate between \$800 and \$950 billion.¹²⁴ Of this amount, it is estimated that approximately \$26 to \$34 billion was spent globally on conventional arms trade in 2002.¹²⁵

The end of the Cold War has, however, twisted this "profit" scheme by leading to a decline in the domestic military expenditures of almost all of the top ten suppliers.¹²⁶ Although this downturn started to rebound around 1998, most of the major supplier countries have not been able to return to their Cold War military expenditure levels.¹²⁷ In addition to this decline in military expenditures, "profit" concerns that were relegated to a secondary role in arms transfers during the Cold War because of strategic concerns became more important than ever when the Cold War ended.¹²⁸ These changes had two important consequences. First, the arms market ended up becoming a buyer's market.¹²⁹ Second, in order to offset this decline in military expenditures and to realize economic benefits, some supplier countries and manufacturers in these countries have started to pursue more aggressive policies in their international sales.¹³⁰ For example, since the

123. AMNESTY INTERNATIONAL, A CATALOGUE OF FAILURES: C8 ARMS EXPORTS AND HUMAN RIGHTS VIOLATIONS, *supra* note 9.

124. SIPRI, SIPRI Military Expenditure Database, available at http://www.sipri.org/contents/milap/milex/mex_world_graph.html; SIPRI, Recent Trends in Military Expenditure, available at http://www.sipri.org/contents/milap/milex/mex_trends.html.

125. According to *SIPRI Yearbook 2004*, which takes into account only actual deliveries, annual global arms trade in 2002 was somewhere between \$26 and \$34 billion. See *SIPRI Yearbook 2004*, *supra* note 18, at 469. For 2003, Richard F. Grimmet estimated that the value of arms agreements was \$25.6 billion. RICHARD F. GRIMMET, CONGRESSIONAL RESEARCH SERVICE, CONVENTIONAL ARMS TRANSFERS TO DEVELOPING NATIONS, 1996–2003, at CRS-3 (2003), available at www.fas.org/man/crs/RL32547.pdf.

126. For data for each of these countries, see SIPRI, The SIPRI Military Expenditure Database, available at http://first.sipri.org/non_first/result_milex.php?send.

127. SIPRI, Recent Trends in Military Expenditure, available at http://www.sipri.org/contents/milap/milex/mex_trends.html.

128. WORLD ECONOMIC AND SOCIAL SURVEY 169 (1997), available at http://web.nps.navy.mil/~relooney/3040_2htm.

129. William Hartung, *A Tale of Three Arms Trades: The Changing Dynamics of Conventional Weapons Proliferation, 1991–2000*, in *AMERICA'S PEACE DIVIDEND* (Ann Markusen ed., 2000), available at <http://www.ciaonet.org/book/markusen/hartung.html>.

130. Janne E. Nolan et al., *The Imperatives for Cooperation*, in *GLOBAL ENGAGEMENT: COOPERATION AND SECURITY IN THE 21ST CENTURY* 19, 25 (Janne E. Nolan ed., 1994); KEITH KRAUSE, *ARMS AND THE STATE: PATTERNS OF MILITARY PRODUCTION AND TRADE* 125 (1992); Ian Anthony et al., *The Trade in Major Conventional Weapons*, in *SIPRI Yearbook 1995: ARMAMENT, DISARMAMENT AND INTERNATIONAL SECURITY* 502 [hereinafter *SIPRI Yearbook 1995*].

early 1990s, the US government not only continued to give loans to foreign government on favorable terms so that they could purchase American arms but also encouraged American embassies abroad to lend greater support to businesses involved in selling arms around the world.¹³¹ The situation in Russia, on the other hand, was more dire. The collapse of the Soviet Union and the structural changes that took place in the arms market following the end of the Cold War damaged the Soviet military-industrial complex, which constituted one of the main pillars of the overall Soviet economy.¹³² Overall, the end of the Cold War created a buyer's market in which arms supplies and suppliers became more abundant; outbidding other supplier countries became the norm more than ever.

One clear example of this outbidding can be seen in arms transfers to China. By becoming the major supplier of conventional arms to China since the start of the US and European arms embargo in 1989, Russian arms sales to China have substantially reduced the impact of these sanctions. Consequently, along with China, some major arms supplier countries such as France and Germany have called for the lifting of the EU sanctions.

In December 2003, the spokesman for the Chinese Foreign Ministry stated that "the EU embargo against China on military sales does not conform with the good momentum in [sic] the development of relations between China and Europe."¹³³ French President Jacques Chirac, German Chancellor Gerhard Schroeder, EU High Representative for Common Foreign and Security Policy Javier Solana, and EU Commissioner for External Affairs Christopher Patten approached the issue quite sympathetically. Even France issued a four-page document calling for "the establishment of a genuine 'strategic partnership' [that] presupposes the abandonment of a rational based on rewards and sanctions."¹³⁴

However, the European Commission has been unwilling to lift the embargo.¹³⁵ The spokeswoman for the EU Commission argued that the Chinese

131. WILLIAM W. KELLER, *ARM IN ARM: THE POLITICAL ECONOMY OF GLOBAL ARMS TRADE* 90–92 (1995); Charles M. Sennott, *Arms Deals Criticized as Corporate US Welfare*, BOSTON GLOBE, 14 Jan. 2003; see, e.g., The White House Office of the Press Secretary, Fact Sheet: Conventional Arms Transfer Policy (17 Feb. 1995), available at www.fas.org/asmp/resources/govern/whfacts.html, stating:

Once an approval for a transfer is made, the U.S. Government will provide support for the proposed U.S. export. In those cases the United States will take such steps as tasking our overseas mission personnel to support overseas marketing efforts of American companies bidding on defense contracts, actively involving senior government officials in promoting sales of particular importance to the United States.

132. KRAUSE, *supra* note 130, at 121; John Berryman, *Russia and the Illicit Arms Trade*, 33 CRIME, L. & SOC. CHANGE 85 (2000).

133. AFP: *PRC FM Spokesman Urges EU To Lift Arms Embargo Against China*, AGENCE FRANCE PRESSE, 18 Dec. 2003, FBIS-CHI-2003-12-18; *EU Considers Lifting Arms Embargo on China*, XINHUA, 26 Jan. 2004, FBIS-CHI-2004-0126.

134. *French Report Examines Dispute with US Over Embargo on Arms Sales to China*, LE MONDE, 12 Mar. 2004.

135. *China Urges EU to Lift Arms Embargo*, EU BUS., 29 Sept. 2004, available at <http://www.eubusiness.com/archive/afp/040930045047.xpkl2mnc>.

would need to demonstrate very clearly that progress has been made in human rights protection before a lifting of the arms embargo can be considered.¹³⁶ The Commission turned down the proposal to lift the embargo on China several times recently.¹³⁷ In a similar fashion, the Bush administration has also opposed the removal of the sanctions.¹³⁸ However, this American concern does not stem from human rights conditions in China. Rather, President Bush has stated that his main interest was to keep the arms race between China and Taiwan in balance.¹³⁹ As the Chinese example demonstrates, while the improvement in human rights conditions is debatable in China, the major suppliers are more than willing to replace each other in arms transfers. The EU and the United States initiated the embargo; but Russian arms transfers to China have effectively undermined it, creating frustration among some of the EU countries that would appreciate a client like China. Interestingly enough, while lifting the embargo against China was being debated in November 2005, the EU imposed arms sanctions on Uzbekistan following the harsh suppression of the Andijan riots that took place in May 2005.¹⁴⁰ Although these sanctions can be considered a way to show the EU's good intentions on human rights, as some observers have noted, it is doubtful that the embargo will make any difference. This is simply because Uzbekistan relies on Russia, China, and other non-European countries rather than EU countries for its military supplies.¹⁴¹ Yet, the fact that some EU members are quite willing to lift the sanctions for China but will go after Uzbekistan raises serious doubts about the EU's human rights concerns in arms exports.

VII. THE OTHER SIDE OF THE COIN: SMALL ARMS, NON-MAJOR SUPPLIERS, AND BLACK AND GRAY MARKETS

Most well-known records of global arms transfers, such as the SIPRI Yearbooks and the Grimmer Report, do not cover two important issues regarding arms

-
136. *AFP: PRC FM Spokesman Urges EU To Lift Arms Embargo Against China*, *supra* note 133.
 137. *EU Snubs Paris Over Arms for Beijing: The French Wants to Lift the Embargo*, CENTRAL NEWS AGENCY, 27 Jan. 2004, FBIS-CHI-2004-0127; *EU Presidency Sources Admits EU Remains Divided Over Arms Embargo on China*, AGENCE FRANCE PRESSE, 23 Apr. 2004, FBIS-CHI-2004-0423.
 138. *Chirac Defies Bush on China Arms*, 22 Feb. 2005, available at <http://news.bbc.co.uk/1/hi/world/europe/4288067.stm>; *Bush Warns EU Not to Lift China Arms Ban*, 23 Feb. 2005, available at <http://www.newsmax.com/archives/articles/2005/2/22/171537.shtml>.
 139. Rob Gifford, *Bush Criticizes EU Plans to Lift China Arms Embargo*, 23 Feb. 2005, available at <http://www.npr.org/templates/story/story.php?storyId=4509590>.
 140. *Council Common Position 2005/792/CFSP of 14 November 2005 Concerning Restrictive Measures Against Uzbekistan*, 2005 OFFICIAL J. EU (L299) 72–79, available at <http://www.sipri.org/contents/expcon/2005-1114euembuzb.pdf>.
 141. C. J. Chivers, *EU Sanctions on Uzbekistan*, INT'L HERALD TRIB., 3 Oct. 2005, available at <http://www.iht.com/articles/2005/10/03/news/uzbek.php#>; *Doubt About Effectiveness of the European Union Sanctions Against Uzbekistan [sic]*, 6 Oct. 2005, available at <http://translate.google.com/translate?hl=en&sl=de&u=http://www.dw-world.de/dw/article/0,1564,1732650,00.html&prev=/search%3Fq%3D>.

transfers: small arms; and illegal and illicit markets, also known as the black and gray markets, respectively. Compared to the rest of the arms transfers, small arms transfers are lesser in value but are much more accessible by countries with poor human rights records or conflict, which in turn makes the competition in global arms trade tougher. According to the latest estimates of the Small Arms Survey, the value of annual global legal exports of small arms is somewhere between \$2.4 billion and \$4 billion.¹⁴²

The largest legal exporters of small arms are the United States, Italy, Belgium, Germany, Russia, Brazil, and China. Although the exports from these countries are primarily for use in the Western markets, an unspecified amount of arms makes its way to countries such as Saudi Arabia, Colombia, Algeria, Bangladesh, Iran, Vietnam, Malaysia, Bhutan, Indonesia, and Ethiopia.¹⁴³

In the case of small arms, major suppliers not only face competition from other major suppliers, but from second and third world countries as well. Since the late 1970s and early 1980s, some second and third world countries, as well as some of the former communist countries of Central and Eastern Europe, have entered the global arms market, particularly in small arms. Although they were not initially successful in exporting on a large scale, second and third world countries have gradually managed to supply small arms to other third world countries.¹⁴⁴ However, the changing structure of the global arms market following the end of the Cold War led to a contraction in the domestic markets in small arms in Central and Eastern Europe, just as it did elsewhere. Coupled with this contraction in the domestic markets, Central and Eastern European countries inherited surplus arms that were left by withdrawing Soviet troops.¹⁴⁵ These excess arms forced these countries to find new markets abroad, sometimes illegally and illicitly.¹⁴⁶ Small arms were either secretly exported to nationally or internationally embargoed destinations; or in the case of illicit transfers, these arms ended up in countries that were not the legal destinations stated in the end-user certificates. Thus, while the dark side of the global arms trade is small arms trade, the darker side is the illegal and illicit small arms trade, estimated at \$1 billion annually.¹⁴⁷

142. *Back to the Sources: International Small Arms Transfers*, in SMALL ARMS SURVEY 2004, available at <http://www.smallarmssurvey.org/Yearbook%202004/2004%20press%20kit-chap.04.pdf>.

143. *Id.*

144. Michael Brzoska, *The Nature and Dimension of the Problem*, in TRANSPARENCY IN INTERNATIONAL ARMS TRANSFERS 19–20 (1990).

145. Berryman, *supra* note 132, at 87–88.

146. *Workshops and Factories: Products and Producers*, in SMALL ARMS SURVEY 2003, at ch. 1 (2003), available at www.smallarmssurvey.org/Yearbook%202003/yb2003_en_presskit_ch1.pdf; *Combating the Illicit Arms Trade*, available at www.csd.bg/fileSrc.php?id=414; HUMAN RIGHTS WATCH, *RIPE FOR REFORM: STEMMING SLOVAKIA'S ARMS TRADE WITH HUMAN RIGHTS ABUSERS* (2004), available at www.hrw.org/reports/2004/slovakia0204/.

147. *Insights and Mysteries: Global Small Arms Transfers*, in SMALL ARMS SURVEY 2003, at ch. 3 (2003), available at http://www.smallarmssurvey.org/Yearbook%202003/yb2003_en_presskit_ch3.pdf.

These second and third tier supplier countries do not dominate the global arms market and thus do not get ranked in the major suppliers list; but their arms, especially small arms and light weapons that are more suitable for the wars waged in the post-Cold War world, eventually find their way to unstable parts of the world.¹⁴⁸ For example, it was not only major suppliers such as the French, the Belgians, and the Russians that sold arms and ammunition to Rwanda before the genocide in 1994, but also a number of former communist countries such as Romania, Bulgaria, the Czech Republic, and Slovakia.¹⁴⁹ Advocacy groups published numerous reports in the late 1990s and the early 2000s documenting the illicit arms trade from countries such as the Czech Republic, Slovakia, Bulgaria, and South Africa. An HRW report published in 2004 detailed arms sales to countries such as Uganda and Angola involving Slovak firms and individuals in the early 2000s.¹⁵⁰ Similarly, different reports issued by HRW in 2001 and Transparency International in 2003 criticized the Czech Republic for selling tanks to Yemen and arms to Sri Lanka, Angola, and Zimbabwe.¹⁵¹ In 2002, the *Christian Science Monitor* disclosed an arms smuggling ring in the Czech republic, which was illicitly transferring arms to Iraq.¹⁵² Another HRW report issued in 1999, as well as various other reports, accused the Bulgarian government of turning a blind eye on the arms sent to various conflict zones around the world.¹⁵³ There were also claims that Serbia and Ukraine had sold arms to Iraq in the early 2000s in defiance of the UN embargo on that country.¹⁵⁴ Moreover, the

148. Brzoska, *supra* note 144; Michael T. Klare, *The Subterranean Arms Trade: Black Market Sales, Covert Operations and Ethnic Warfare*, in *CASCADE OF ARMS: MANAGING CONVENTIONAL WEAPONS PROLIFERATION* 43 (Andrew J. Pierre ed., 1997).

149. Stephen D. Goose & Frank Smyth, *Arming Genocide in Rwanda*, *FOR. AFF.*, Sept.–Oct. 1994.

150. HUMAN RIGHTS WATCH, *RIPE FOR REFORM: STEMMING SLOVAKIA'S ARMS TRADE WITH HUMAN RIGHTS ABUSERS*, *supra* note 146; Human Rights Watch, *The Evolution of Slovakia's Arms Trade Controls and the Need for Further Reforms*, in *RIPE FOR REFORM: STEMMING SLOVAKIA'S ARMS TRADE WITH HUMAN RIGHTS ABUSERS* (2004), available at http://www.hrw.org/reports/2004/slovakia0204/5.htm#_Toc61081342.

151. *Czech Cabinet Spokesman Explains Premier's Statement on Arms Export*, *PRAGUE CTK*, 20 Apr. 2001, FBIS-EEU-2001-0420; *Arms Export Control in Czech Republic, Slovakia Criticized By HRW*, *PRAGUE CTK*, 21 Nov. 2001, FBIS-EEU-2001-1122; HUMAN RIGHTS WATCH, *WORLD REPORT 2002*, at Czech Republic (2002), available at www.hrw.org/wr2k2/europe8.html; *Transparency International Faults Lack of Control Over Czech Arms Exports*, *LIDOV NOVINY*, 7 Oct. 2003, FBIS-EEU-2003-1009.

152. Arie Farnam, *Iraq Buying Arms in East Europe's Black Markets*, *CHRISTIAN SCI. MON.*, 11 Sept. 2002.

153. HUMAN RIGHTS WATCH, *A REVIEW OF BULGARIAN ARMS TRADE* (1999), available at http://www.hrw.org/reports/1999/bulgaria/Bulga994-01.htm#P294_52761; JEFFREY P. BIALOS, *THE BULGARIAN DEFENSE INDUSTRY: STRATEGIC OPTION FOR TRANSFORMATION, REORIENTATION AND NATO INTEGRATION* 3 (2001). Another recent report on Bulgarian arms exports put the total exports of military goods of this country at \$80 million in 2002, \$30 of which were exports of small arms. See, e.g., *Bulgarian NGO Reports on Declining Arms Exports, Smuggling*, 24 *CHASA*, 5 Apr. 2004, FBIS-EEU-2004-04-05.

154. CNN, *Yugoslavia 'Sold Arms to Iraq'*, 23 Oct. 2002, available at <http://archives.cnn.com/2002/WORLD/europe/10/23/yugoslavia.iraq/>; Wade Boese, *U.S. Says Ukrainian President*

unrecognized Transdniestrian Republic in Moldova is said to have five or six facilities producing “small arms, mortars and missile-launchers, for sale to the world’s trouble-spots.”¹⁵⁵

Another way non-major suppliers are involved in arms transfers to countries with imperfect human rights records is with the reselling of arms. These non-major suppliers, apart from selling arms manufactured in their countries, operate as part of the global gray and black market networks, reselling arms purchased from major supplier countries. In 2001 it was reported that the Democratic Republic of Congo and Namibia were selling arms that they had purchased from France to their neighbor Zimbabwe, a country embargoed due to its poor human rights record.¹⁵⁶ In 2003, Global Witness, an environmental organization, reported that Chinese-manufactured AK-47s and other arms were shipped to Liberia from Hong Kong ports in return for Liberian timber exports.¹⁵⁷

Although the picture created by the non-major suppliers is bleak, there have been recent changes in the laws that regulate arms transfers in these countries. These countries began to pass legislation that will, at least on paper, either prohibit sales to human right violators or conflict zones or make arms sales more transparent. For example, in late 2002, South Africa, whose client list in the late 1990s included countries such as Algeria, Angola, Congo, Egypt, India, Colombia, and Israel,¹⁵⁸ officially established a National Arms Control Committee that would monitor conventional arms sales.¹⁵⁹ The Czech Deputy Foreign Minister claimed that the Czech government had “altered the method of issuing licenses so that it respects in the

Approved Arms Sale to Iraq, ARMS CONTROL TODAY, Oct. 2002, available at http://www.armscontrol.org/act/2002_10/ukraineoct02.asp?print.

155. *The Hazards of a Long, Hard Freeze; Former Soviet War Zones*, ECONOMIST, 21 Aug. 2004, at 41–43.
156. *Zimbabwe Reportedly Amassing Arms Ahead of Election; Namibia, DRC Implicated*, FIN. GAZ., 18 Oct. 2001, FBIS-AFR-2001-1018.
157. *AFP: Report Claims Hong Kong Linked to Illegal Arms Trade in Liberia*, AGENCE FRANCE PRESSE, 11 May 2003, FBIS-CHI-2003-0511.
158. Editorial, *RSA Paper Castigates State Over Arms Sales Decisions*, CAPE TOWN DIE BURGER, 2 Feb. 1999, FBIS-AFR-1999-0302; *Contradiction Seen in New RSA Arms Program*, JOHANNESBURG BUSINESS DAY, 22 Dec. 1999, FBIS-AFR-1999-1222.
159. *RSA: National Assembly Approves Bill to Control Arms Sales*, JOHANNESBURG SAPA, 20 Aug. 2002, FBIS-AFR-2002-0820; *RSA: National Council of Provinces Passes “Controversial” Arms Control Bill*, JOHANNESBURG SAPA, 17 Oct. 2002, FBIS-AFR-2002-1017. Yet in February 2004, at the height of Haitian crises, the South African President authorized a shipment containing rifles, bullets, smoke grenades, and bullet-proof vests to Haiti without the approval of the Parliament, causing an uproar in that country. *Haiti Arms Row Rocks South Africa*, BBC NEWS, available at news.bbc.co.uk/2/hi/africa/3513006.stm; *RSA: Opposition DA Leader Urges Government to Stop Shipment of Arms to Haiti*, JOHANNESBURG SAPA 28 Feb. 2004, FBIS-LAT-2004-0228. Yet the South African government rejected the fact that the shipments reached Haiti. *DA Digs Deeper in Haiti Saga*, BBC NEWS, 5 Mar. 2004, available at www.news24.com/News24/South_Africa/News/0,,2-7-1442_1494104,00.html.

best possible way the requirements of the [EU] Code.”¹⁶⁰ Consequently, in 2004, the Czech government reported that it canceled the sale of a radar system to China along with nine other items.¹⁶¹ Likewise, in 2002, Bulgaria and Slovakia adopted bills to regulate arms exports from their countries. However an HRW report argued that these reforms were far from effective in decreasing the violations in arms exports from these countries.¹⁶² It is quite doubtful that these new laws in the second tier supplier countries will be any more effective than those in the major supplier countries.

VIII. CONCLUSION: WHAT IS TO BE DONE?

This article examined the current state of the arms export control policies of major supplier countries, as well as arms exports to countries with poor human rights conditions. It began by detailing the top suppliers and the laws, both at the domestic and international levels, that they were subjected to while transferring arms globally. As this article has illustrated, most of the countries that rank as top suppliers are either “bound” or “encouraged” by law to pay attention to human rights conditions in recipient countries.

Unfortunately, despite all these restrictions, as illustrated in Figure 2, five of the top ten recipients are classified as *Not Free* or *Partly Free* countries by Freedom House. Amongst the top sixty recipients, which accounts for almost 96 percent of the conventional arms globally transferred, the total number of countries with poor human rights is thirty. To make things worse, of these thirty, twelve countries not only have poor human rights records but are also involved in some form of conflict.

Overall, as illustrated in Figure 3, it can be argued that laws, especially at the domestic level, could be effective in curbing major suppliers’ enthusiasm in selling arms to countries with poor human rights records or with conflict. When the dominance of the United States and Russia in the global arms market is compared, Russia, with no domestic laws stipulating or encouraging it to take human rights into consideration, has a diversified

160. Pavel Baroch, *Defense Industry Criticizes Czech Authorities for Complicating Arms Exports*, PRAGUE HOSPODARSKE NOVINY, 30 Aug. 2004, FBIS-EEU-2004-0901.

161. *Czech Ministry Bans Nine Arms Exports in 2004*, CZECH CTK, 31 Aug. 2004, FBIS-EEU-2004-0831.

162. HUMAN RIGHTS WATCH, ARMS TRADE, HUMAN RIGHTS, AND EUROPEAN UNION ENLARGEMENT THE RECORD OF CANDIDATE COUNTRIES (2002), available at http://www.hrw.org/backgrounder/arms/eu_briefing.htm. Human Rights Watch, *The Case for Further Reform*, in RIPE FOR REFORM: STEMMING SLOVAKIA’S ARMS TRADE WITH HUMAN RIGHTS ABUSERS, *supra* note 146, available at http://www.hrw.org/reports/2004/slovakia0204/5.htm#_Toc61081342. In the mean time, in January 2004, the Bulgarian government added Iraq, Congo, and Liberia to its list of countries to which Bulgarian arms exports were prohibited. See, e.g., *Bulgarian Government Updates Arms Export Blacklist*, SOFIA BTA, 22 Jan. 2004, FBIS-EEU-2004-0122.

client portfolio catering to twenty different countries with poor human rights records while supplying 30 percent of the arms transferred globally during the same period. In contrast, the United States, which supplied 34 percent of global arms, had only nine clients with poor human rights records. So, what can be done to make supplier states rigorously follow the rules so that national and internal laws and regulations do not simply remain words on paper?

In terms of strengthening legal regimes, several Nobel Laureates, headed by former Costa Rican President Oscar Arias, have been working since 1997 on an International Code of Conduct.¹⁶³ So far, the development of this Code has been slow.¹⁶⁴ The proposed code aims to create an international code without the interpretive language of the existing codes by making recipient countries meet certain human rights criteria in order to be eligible to receive arms. In other words, the goal of the International Code of Conduct is to prohibit all arms sales to countries “unless” they respect human rights. This language is quite contrary to other existing international codes that allow sales “except” in the cases in which there are “clear risks” of human rights violations.¹⁶⁵

Recently, NGOs have started to play an important role in the shaping of arms control agendas. Their role, especially in the creation and implementation of the Ottawa Treaty, which banned antipersonnel landmines, has already been the subject of several studies.¹⁶⁶ In the case of conventional weapons, NGOs continue to be the watchdogs of states that apply laws liberally. In October 2003, three major advocacy groups, Amnesty International, Oxfam, and the International Action Network on Small Arms (IANSA), initiated a campaign for the signing of an international treaty that would provide better control of global arms trade.¹⁶⁷ These advocacy groups also continue to criticize the practices of major supplier states. The Amnesty International report issued in December 2003 argued that G8 countries, most of which are major supplier countries, fail to put any effort into creating a “coordina-

163. Merrill Goozner, *Nobel Laureates Press to Curb World Arms Trade; Peace Prize Winners Come Together to Issue a Call for an International Code of Conduct*, CHI. TRIB., 29 May 1997, at N4.

164. Europa World, *An International Code for Arms Transfers*, available at <http://www.europa-world.org/issue6/intcodearmtrans271000.htm>; Stop the Terror Trade: The Commission of Nobel Peace Laureates' Initiative to Control Arms Transfers, available at <http://www.arias.or.cr/fundarias/cpr/armslaw/declaration.html>.

165. *Id.*

166. Kenneth R. Rutherford, *The Evolving Arms Control Agenda: Implications of the Role of the NGOs in Banning Antipersonnel Landmines*, 53 WORLD POL. 74 (2000).

167. Press Release, Oxfam, *The International Human Rights Day Sees World Support Build for International Arms Trade Treaty* (10 Dec. 2003), available at http://www.oxfam.org.uk/press/releases/controlarms_humanrights.htm. See e.g., Control Arms Campaign, available at <http://www.controlarms.org>.

tion mechanism" among the group and instead place the "responsibility" on recipient countries.¹⁶⁸

In 2005, the idea of an international arms treaty gained speed one more time. In March 2005, British Foreign Secretary Jack Straw declared his country's intention to establish an international arms treaty within the United Nations.¹⁶⁹ Following this, in October 2005, the Council of the European Union "acknowledged the support, in all parts of the world, for an international treaty to establish common standards for the global trade in conventional arms."¹⁷⁰ The Council also stated that the platform for such a trade should be the United Nations.¹⁷¹

Given the competitive nature of the current arms market, it is doubtful that major suppliers would be willing to embrace an international code with real and stringent controls on their arms exports. Furthermore, the US strategy following 11 September 2001, which has been to build "coalitions" at all cost, has resulted in the lifting of sanctions to countries such as India, Pakistan, Azerbaijan, and Tajikistan and the increase of arms transfers to many other countries with dubious human rights records, creates doubts about the intentions of the great powers.¹⁷² These recent developments demonstrate that what the world needs is a change in mentality more than a change in codes. Arms transfers to countries with poor human rights records have opportunity costs in terms of human and international security. Arms in the wrong hands likely worsen human rights conditions and curtail human development by draining precious resources in the recipient country. As the world witnessed during the first Gulf War, in Afghanistan, and elsewhere, weapons can just as well be used against supplier countries.

168. AMNESTY INTERNATIONAL, A CATALOGUE OF FAILURES: G8 ARMS EXPORTS AND HUMAN RIGHTS VIOLATIONS, *supra* note 9.

169. Friends Committee on National Legislation, Questions and Answers on the Proposed Arms Trade Treaty, *available at* http://www.fcnl.org/issues/item.php?item_id=1426&issue_id=47.

170. Friends Committee on National Legislation, Council Conclusions on an International Treaty on the Arms Trade, *available at* http://www.fcnl.org/pdfs/ATT_EUCommission.pdf.

171. *Id.*

172. Sibylle Bauer, *Arms Exports Post 9/11 and the Flood Gates Open?*, 11 EUR. SECURITY REV. 6-7 (2002).